

1936 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1936)
(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.



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state auditor to transmit his warrants on the state treasury to the county treasurer of the respective counties for the sum that may be due in accordance with this act, which sum or sums are hereby appropriated out of the state treasury from the amounts received from the United States government, pursuant to the aforesaid act of congress. The State Auditor upon being notified by the Federal government or any agencies thereof that a loan has been made to any such county the repayment of which is to be made from said fund is authorized to transmit his warrant or warrants on the State Treasurer to the Federal government or any agency thereof sufficient to repay such loan out of any moneys apportioned or due to such county under the provisions of said act of Congress, approved May 23, 1908 (35 Stat. 260). ('13, c. 58, §2; Jan. 24, 1936, Ex. Ses., c. 80, §2.)

6536-13. Same—use for schools and roads near national forests.—It shall be the duty of the county board of each county receiving such money to use the portion allotted to public schools to aid in maintaining those school districts that may be situated within or near the national forest, and the portion allotted for public roads shall be used, so far as practicable, in the construction and repair of roads within or near the national forests; provided, however, that this section shall not apply to any such sums of money which may have been allotted or set aside for the purpose of paying loans which may have been made by any county pursuant to the provisions of Sections 1 and 2 of this act. ('13, c. 58, §3; Jan. 24, 1936, Ex. Ses., c. 80, §3.)

CHAPTER 41

Eminent Domain

6537. Right of eminent domain.

177M146, 225NW86.

An enlargement by the court against objection, of condemnation proceedings to include easements over lands or lots not sought in the state's petition, is an unwarranted interference with properly delegated legislative functions. *State v. Erickson*, 185M60, 239NW908. See Dun. Dig. 4158(71).

The highway commissioner's order designating the permanent re-routing of a trunk highway does not in itself constitute a taking of the property within the designated route. It is the exercise of a legislative function constitutionally delegated to the commissioner by the Legislature and is conclusive on the courts as to the necessity of the taking. *State v. Erickson*, 185M60, 239NW908. See Dun. Dig. 4158(71).

Eminent domain is a right possessed by state in its sovereign capacity. It is not conferred by the constitution, but is restricted by it. Its exercise rests exclusively in legislature. Judicial power comes into play only to extent that constitution guarantees owner of property right to compensation. *State v. Severson*, 194M644, 261NW469. See Dun. Dig. 3012, 3013, 3014, 3080.

Village of North St. Paul has authority to condemn rights of way for an alley or to condemn an easement for water and sewer pipes across private property. *Op. Atty. Gen.*, May 26, 1931.

School district is not entitled to reimbursement from state by reason of reduction of assessed valuation by taking of large amount of land by condemnation proceeding. *Op. Atty. Gen.* (8170), June 22, 1934.

School house on private land remains personal property and as such property of district, and district, though it did not appear and assert its title in condemnation proceedings, is entitled to compensation for such school house, if such building was not considered a part of the land in arriving at its value. *Id.*

City of Waseca under its home rule charter has power to condemn lands outside its limits for airport, and procedure to be followed is that provided by such charter. *Op. Atty. Gen.* (8177), Aug. 3, 1934.

Laws 1935, c. 52, is not applicable to proceedings for acquisition of land for Talcot Lake project for which federal government is providing money for construction purposes but not for acquisition of land. *Op. Atty. Gen.* (817h), Mar. 25, 1935.

6538. Definitions.

Owner of lot abutting on a street has no right of action against a railroad which crosses the street upon an embankment and obstructs its use when the damage he suffers it not special. *Locascio v. N.*, 185M281, 240NW 661. See Dun. Dig. 3049(14).

6541. Petition and notice.

There was no authority and no public necessity for the condemnation of an easement for an electric power line through Jay Cooke State Park. 177M343, 225NW164.

6543. Order made thereon.—Commissioners.

Owner of land abutting on trunk highway on which easement for highway purposes has been taken may object to placing of mail box thereon by another person. *Op. Atty. Gen.*, Sept 6, 1932.

6546. Payment—Tender—Deposit in court.

Boundary dispute between claimants of land condemned. *Fitzpatrick v. B.*, 176M468, 223NW767.

The United States seeking to condemn lands for a public building, has no further interest in the condemnation proceedings after it pays the award to the clerk of the court. *St. Paul v. Certain Lands*, (CCA8), 48F(2d)805. See Dun. Dig. 3100.

Where an award is made to owner of land upon which mortgage is being foreclosed, the purchaser at the foreclosure sale is entitled to the award in the absence of redemption. *Op. Atty. Gen.*, Apr. 2, 1931.

6548. Accruing taxes.

Delinquent taxes on land are a first lien and should be paid first out of an award made in condemnation proceedings by the highway department. *Op. Atty. Gen.*, Aug. 8, 1930.

Where damages are awarded in condemnation proceedings by the highway department, and they are insufficient to cover taxes against the land, they should be distributed among the various funds the same as they would be if the taxes had been paid. *Op. Atty. Gen.*, Aug. 8, 1930.

Where Government condemns property for post office, title does not pass until final judgment and payment of the award, and county auditor has authority until that time to assess taxes against the property, even though under Mason's USCA, Title 40, §258, title relates back to the date of the filing of the commissioner's award. *Op. Atty. Gen.*, Jan. 26, 1931.

Where City of St. Paul acquired by condemnation portions of property for widening of street and property owner gave City deed on December 26th, 1930, and award was ratified by City Council on December 30th, 1930, but proceedings of Council were not published in the official newspaper until January 3rd, 1931, on which date award was paid, taxes for 1930 spread by the auditor on December 24th, 1930, constituted a lien on the property and should be paid by the City. *Op. Atty. Gen.*, April 25, 1931.

6549. Appeal.

City intervening to recover special assessments, held not entitled to appeal from award. *St. Paul v. Certain Lands*, (CCA8), 48F(2d)805. See Dun. Dig. 3107.

6550. Trial—Costs.

To the extent that traffic upon a trunk highway is beneficial to an abutting farm, as such, it is a benefit in common with the general public. 176M525, 223NW 923.

Special benefits may be shown in the reduction of damages. 176M525, 223NW923.

Gross damages are first to be determined and then award is to be apportioned as justice may require. 176M525, 223NW923.

Where such rule is ignored, and a different procedure is adopted without objection, in which the dissatisfied party has acquiesced, he cannot thereafter complain. 176M525, 223NW923.

Persons appointed by the court, and who serve as appraisers in a condemnation proceeding, are competent witnesses who may be called by either party on an appeal. *Northern States Power Co. v. B.*, 187M353, 245NW 609. See Dun. Dig. 3112.

6551. Judgment—Possession.

Where the United States condemned property on which special assessments had been levied for a street improvement, and title passed to the government by deposit of the condemnation money in court, the city had no equitable lien on the condemnation money where judgment confirming the assessment was reversed on appeal, and the lien of the assessment did not attach to the land prior to the transfer of the title to the government, especially where there was no presumption that the condemnation commissioners included in the award any increase in the value of the land arising from the improvement, though a reassessment was made after the government obtained title. *Drake v. C.*, (CC A8), 65F(2d)119. See Dun. Dig. 3076.

One obtaining market value of property was not entitled to an additional award for expense of removal from the premises. 176M389, 223NW458.

Negligent construction of bridge and failure to remedy its defects did not constitute injuries of such permanent nature as to require imposition of a perpetual easement

in highway condemnation. *State v. Hall*, 261NW874. See Dun. Dig. 3078a.

6552. Interest—Award, when payable—Dismissal. 48F(2d)183.

In condemnation proceedings the charter provisions, in force at the time the order of the city council confirming the award is adopted, governs the right to interest thereon. *L. Realty Co. v. C.*, 183M499, 237NW192. See Dun. Dig. 3103.

This section has no application to proceedings with reference to establishment of town and county roads under §§2582, 2583 and 2585. Op. Atty. Gen. (377b-10(d)). Sept. 7, 1934.

6554. Property taken by state to be an estate without right or reversion.

State highway department usually only acquires an easement for road purposes or to take out gravel from gravel pits, and ownership of trees or timber remains in original owner, in absence of agreement. Op. Atty. Gen., Oct. 30, 1933.

6557-1. Eminent domain proceedings by state or its agencies—Procedure.

State v. Stanley, 247NW509; note under §2554. This section is constitutional. *State v. Severson*, 194M 644, 261NW469. See Dun. Dig. 1677.

This section is not special legislation because it limits time for appeal in condemnation proceedings brought by state to acquire rights of way for trunk highways without requiring notice to start running of 30-day limitations, as is required in other condemnation proceedings. *Id.*

(c). Negligent construction of bridge and failure to remedy its defects did not constitute injuries of such permanent nature as to require imposition of a perpetual easement in highway condemnation. *State v. Hall*, 261NW874. See Dun. Dig. 3078a.

Final certificate was intended and in fact took the place of the final decree applicable under Gen. St. 1923, §6553. *State v. Hall*, 261NW874. See Dun. Dig. 3105.

Intervention was not available after closing of condemnation proceedings by approval of certificate in state highway establishment. *Id.* See Dun. Dig. 4897a.

(e). Where commissioner of highways trespasses upon or appropriates land outside right of way, he becomes liable to owner thereof for damage thereto. *Nelson v. B.*, 188M584, 248NW49. See Dun. Dig. 3128.

6557-4. Easement for snow fences.—Whenever the right to establish a public road is acquired by the state or by any of its agencies or political subdivisions, there shall be included in the easement so acquired the power to erect and maintain temporary snow fences as required upon lands adjoining the highway part of which lands have been taken for road purposes. The right to erect and maintain such fences shall be considered in awarding damages and any award shall be conclusively presumed to include the damages, if any, caused by the right to erect and maintain such fences provided that if the state or agency or political subdivision thereof shall file with its petition or at any time before the question of damages is submitted to a jury a written disclaimer of its desire and intention to acquire a right to erect and maintain snow fences as to any particular tract of land involved, then no such right shall be acquired in such proceeding and no consideration given to such fences as an element of damage. (Act Apr. 26, 1929, c. 396, §1.)

6578-1. Award of compensation and damage in condemnation proceedings.—Whenever an award of compensation and damages shall be confirmed by the city council of any city of the first class in the State of Minnesota, existing and governed under a charter adopted pursuant to Section 36, Article 4, of the State Constitution, in any proceeding for the taking of property under the power of eminent domain, and not appealed from, and whenever the same, when appealed from, shall not be set aside by the court, the same shall constitute a lawful and sufficient condemnation and appropriation to public use of the land and property and rights in property for which compensation or damages are so awarded, and the city council shall thereupon cause to be paid from the funds of such city, to the owner of such property, the amount awarded to each severally.

Before payment of such award, the owner of such property or the claimant of the award shall fur-

nish an abstract of title showing himself entitled to all of the compensation and damage claimed. In case of neglect to furnish such abstract, or if there shall be any doubt as to who is entitled to such compensation or damage or any part of the same, the amount so awarded shall be by the city council appropriated and set apart in the city treasury for whoever shall show clear right to receive the same. The city council may in its discretion require of such claimant a bond with good and sufficient sureties, conditioned to indemnify and save the city harmless against all other claims for such compensation or damages, or for the property for which the same was awarded and all loss, costs of expenses on account of such claim, Provided, that whenever the city attorney shall certify in writing to the city council that he is in doubt as to whom the said award shall be paid, said city council may order a warrant to be drawn for the same, payable to the clerk of the district court, and the city clerk shall deliver the same to said clerk of the same court, and take his receipt for the same; which deposit with said clerk of the court shall have the same effect as if set aside in the city treasury, as hereinbefore provided, and in which case the parties entitled to the same shall establish their right to the same by a petition to the said District Court, setting up the facts entitling them thereto, and by proving the same to the satisfaction of the court, and when so established the court shall make an order directing to whom the same shall be paid.

Upon the payment of said award or appropriation or the setting apart of the money in the city treasury to pay the same as aforesaid, the city shall become vested with the title to the property taken and condemned absolutely for all purposes for which the city may ever have occasion to use the same, and may forthwith enter upon and use the same. Provided that whenever any such award shall be confirmed by the city council of any such city and an appeal shall be taken therefrom, the city council shall be and hereby is authorized and empowered, by resolution enacted by affirmative vote of a majority of all of its members elected, to appropriate and set aside in the treasury of the city, in a fund therein to be known as the "Condemnation and Award Fund," a sum of money equal in amount to such award providing for the retention thereof therein, during the pendency of the appeal, available at all times for the payment thereof upon demand to whomsoever may be shown to have a clear right thereto, and further pledge the full faith and credit of the city for the payment of any increase of the award allowed upon the appeal; then in such case, regardless of the appeal, upon the enactment of such resolution by the city council and the setting apart of the amount of the award in the treasury of the city, the city shall be entitled to enter upon and take possession of the property condemned and to put such property to the use or uses for which such condemnation was made. ('21, c. 219, §1; Apr. 25, 1931, c. 396.)

This section is not violative of the 14th amendment, in that it does not afford a fair tribunal to a property owner. 32F(2d)748.

Fixing of amount of damages is a step in condemnation proceedings and is at most only quasi judicial. 177 M146, 225NW86.

This section sufficiently protects the landowner against any taking of his property without compensation first paid or secured. 177M146, 225NW86.

Proceedings held to sufficiently show purpose for which land was taken and that it was taken for a public purpose. 177M146, 225NW86.

In street widening proceeding, landowner is entitled to damages at least to the extent of market value of the land taken in the condition and situation it then occupied, not an isolated tract, but as a part of the whole. Improvement of Third St., 177M159, 225NW92.

Landowner cannot claim damages on theory that at some future time there may be a change of the grade of the street, his right to receive damages at any such time not being affected. Improvement of Third St., 177 M159, 225NW92.

Lease was not terminated by condemnation by city of part of building so as to exclude lessee from asserting right to share in compensation, notwithstanding covenant in lease that in case building should become untenable, lessee shall be relieved of rent and lease shall terminate unless lessor rebuilds within reasonable time. *Siggelkow v. A.*, 187M395, 245NW629. See Dun. Dig. 5412.

In action for conversion of personal property, question whether city's conduct in entering upon condemned property was in contravention of forcible entry and unlawful detainer statute, held not presented by record. *Dow-Arneson Co. v. C.*, 191M28, 253NW6. See Dun. Dig. 386.

City taking possession of condemned real property held to create relationship in nature of constructive bailment of personal property thereon and to have become gratuitous bailee liable only for failure to exercise good faith as regards care of property. *Id.* See Dun. Dig. 728.

6578-3. Commissioner of conservation to acquire certain lands.—Authority is given to the Commissioner of Conservation to acquire and to use the procedure set forth in Chapter 52 of the Laws of 1935 [§§5620-29, 5620-30], as far as applicable, in acquiring the land necessary for the Talcot Lake Project in Murray and Cottonwood Counties, such land to be paid for

from any available funds of the Department of Conservation or from money provided by the United States government. (Act Apr. 1, 1935, c. 105, §1.)

Preamble.

Whereas, the federal government has allocated \$75,000 for the improvement of Talcot Lake in Murray and Cottonwood Counties and the lands in the vicinity thereof as a public hunting ground and game refuge on condition that the state acquire title to the necessary land on great advantage to the state, and

Whereas, the acquisition of such lands and the improvement thereof for said public purposes will be of great advantage to the state, and

Whereas, other projects of a similar character are pending in which the federal government may provide funds for improvement in case the state promptly acquires title to the necessary land:

6578-4. Authority of commissioner.—Authority is likewise given to the Commissioner of Conservation to acquire and to use the procedure set forth in said Chapter 52, so far as applicable, in acquiring any land necessary for other projects of a similar character in which the United States shall provide the funds for necessary improvements. (Act Apr. 1, 1935, c. 105, §2.)

CHAPTER 42

Water Powers

MILLS AND DAMS

6579. Dams—For what purposes—Eminent domain.

Owner and operator of a dam for industrial purposes in a river or natural water course is not an insurer of its safety, but is bound to exercise a degree of care in its construction, maintenance, and operation proportionate to injuries likely to result to others; care commensurate with danger. *Willie v. M.*, 190M95, 250NW 809. See Dun. Dig. 10191, n. 78.

Doctrine of *res ipsa loquitur* applies where a dam is wholly within control of defendant and its failure or operation results in injury to others such as could reasonably be anticipated. *Id.* See Dun. Dig. 7044.

Negligence of owner and operator of dam in flooding river valley, held for jury, notwithstanding rainfall was unusually heavy and other flood water came into valley and contributed to flood and notwithstanding there were obstructions in river below dam. *Id.* See Dun. Dig. 10191.

UNIFORM STAGE OF WATER IN LAKES AND STREAMS

6588. County board may establish—Eminent domain.

Section confers no authority upon a county board to fix levels or erect dams on lakes, major parts of which lie outside county, and, where there is no adoption or ratification by county of acts of board in fixing a level above high-water mark or furthering erection of a dam which so raises water in such a lake, defense of ultra vires is available to county. *Erickson v. C.*, 190M433, 252 NW219. See Dun. Dig. 10187-10189.

Right of riparian owners does not prevent raising of lake level to natural highwater mark, though lake is temporarily dry. *Op. Atty. Gen.*, Jan. 30, 1934.

6594. Cost of maintenance, etc.—Management.

There cannot be a second assessment for benefit. *Op. Atty. Gen.* (408b), May 6, 1935.

6595. Lakes in two or more counties—water boards.—Whenever any such navigable lake lies partly within two or more counties having fewer than one hundred and fifty thousand inhabitants each, the chairman of the county boards thereof shall constitute a water board for said counties, and, as such, shall have all the powers and be subject to all the duties in respect to the waters of such lake that are conferred and imposed upon the county board by Sections 6588-6594. And except as otherwise provided in Section 6596, all the provisions aforesaid relating to the raising and retention of the waters in navigable lakes, the acquiring of property therefor, and the assessment and collection of benefits arising therefrom, shall apply to cases wherein such water boards are formed. (R. L. '05, §2559; G. S. '13, §5445; Apr. 1, 1935, c. 99.)

6597. Council given right to acquire title to navigable lakes.

State may legally delegate to village council authority to supervise operation of dam in connection with control of water level. *Op. Atty. Gen.* (4007), June 14, 1935.

6602-2. Control of shore lines.—That in order to preserve shore lines, rapids, waterfalls, beaches, and other natural features in an unmodified state of nature, no dam and no addition to any existing dam shall hereafter be constructed in or across any public stream or body of water within or bordering upon those portions of the area of Cook, Lake, and St. Louis Counties designated in the Act of Congress of July 10, 1930 (Chapter 880), and no alteration of the natural water level or volume of flowage of any such stream or body of water shall be made and no easement for flooding or overflowing or otherwise affecting lands of the State of Minnesota adjacent thereto shall be granted, unless and until specific authority shall have first been obtained by Act of the Legislature of the State of Minnesota: Provided, that with the written approval and consent of the Department of Conservation, together with the signed authority of the Executive Council of the State of Minnesota, dams for public recreational uses or dams essential for logging or for logging reservoirs that do not exceed 100 acres in extent may be constructed to maintain temporarily water levels not higher than the normal high water mark: Provided, however, that every such approval shall be subject to suitable charges, time limitation, and other conditions designed fully to protect the public interest in the intent of this Act. Provided further, that the provisions of this Act shall not apply to that portion of any proposed development for water power purposes now or heretofore actually occupied and maintained by any applicant for license to make such development under the terms of the Federal Water Power Act if the application for such license was pending on or before January 1, 1928. Such occupancy is hereby legalized and confirmed and such occupant is hereby granted the right to occupy and use for water power purposes, and so long as required and used for such purposes, the state lands and waters now or heretofore so occupied and used up to an elevation not exceeding 2 feet above the lowest crest of the spillway or overflow dam of such occupant as now constructed; provided that no water control structures shall be used higher than those now or heretofore used. The occupant shall pay to the state annually reason-